

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

WOLD, et al,	)	
	)	<b>CPSGMHB Case No. 10-3-</b>
	)	<b>0005c</b>
Petitioners,	)	
	)	<b>(Wold, et al)</b>
v.	)	
	)	<b>ORDER ON DISPOSITIVE</b>
CITY OF POULSBO,	)	<b>MOTIONS – CITY OF</b>
	)	<b>POULSBO’S MOTION TO</b>
Respondent.	)	<b>DISMISS</b>
	)	
	)	

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This matter comes before the Board on the filing of the City of Poulsbo’s Motion to Dismiss.<sup>1</sup> Petitioners object to this motion, withdrawing several issues, but otherwise asserting that the Board should deny the motion.<sup>2</sup>

**I. MOTION TO DISMISS**

With this case, Petitioners challenge the City of Poulsbo’s enactment of Ordinance No. 2009-14, which adopted the 2009 City of Poulsbo Comprehensive Plan and changed the land use designation and zoning classification for certain properties. After a Prehearing Conference and a request of the Board for Petitioners to restate their issues, the Board’s Prehearing Order set forth 38 issues.<sup>3</sup>

The City’s Motion to Dismiss consists of nine motions for the Board’s consideration. The first seeks to dismiss the PFR in its entirety while the others seeks dismissal of various issues, in whole or in part, based primarily on Petitioners’ standing or the Board’s Jurisdiction.<sup>4</sup>

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<sup>1</sup> City of Poulsbo’s Motion to Dismiss, filed April 2, 2010 [City’s Motion]

<sup>2</sup> Petitioners’ Response to City of Poulsbo’s Motion to Dismiss, filed April 19, 2010 [Petitioners’ Response]. The City filed a rebuttal to the Petitioners’ Response on April 23, 2010 [City’s Reply].

<sup>3</sup> March 17, 2010 Prehearing Order

<sup>4</sup> City’s Motion at 1-2

1 **A. City's Motion to Dismiss the Petition for Review for Petitioner's Failure to**  
2 **Comply with WAC 242-02-210**  
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4 WAC 242-02-210 sets forth the contents for a Petition for Review (PFR). This provision  
5 of the Board's Rules of Practice and Procedure provides, in relevant part:  
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8 A petition for review shall substantially contain:  
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10 ...  
11 (3) One copy of the applicable provisions of the document being  
12 appealed, if any, shall be attached to the petition for review. Petitioner  
13 shall provide the board with a copy of the document being appealed within  
14 thirty days of filing a petition for review, unless otherwise directed by the  
15 board.  
16

17 *Position of the Parties*  
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19 The City acknowledges that while the original filing of the PFR did include copies of  
20 Poulsbo Ordinance No. 2009-14, it did not include, as part of the submission, the  
21 Comprehensive Plan, which it asserts is the actual document being appealed. The City  
22 contends the Comprehensive Plan is a mandatory element required by WAC 242-02-  
23 210 and, therefore, the PFR must be dismissed.<sup>5</sup>  
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29 Petitioners argue the supplied Ordinance and the detailed statement of issues satisfies  
30 the requirements for the PFR. The Petitioners note the opening sentence of WAC 242-  
31 02-210 states, "A petition for review shall substantially contain" and by attaching the  
32 ordinance to the PFR they were supplying the documentation needed to satisfy the  
33 Board's rule.<sup>6</sup> In addition, the Petitioners state there is not specific requirement to attach  
34 the Comprehensive Plan to the PFR.<sup>7</sup>  
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40 In addition, Petitioners assert the City has suffered no harm due to the failure to attach  
41 the full Comprehensive Plan to the PFR. They contend the City and the Board are fully  
42 aware that the challenge is to the Ordinance, which amends the Comprehensive Plan,  
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49 <sup>5</sup> City's Motion, at 2-3

50 <sup>6</sup> Petitioners' Response, at 3

<sup>7</sup> Petitioners' Response, at 4-5

1 and further note that the Board required the City to furnish the Comprehensive Plan for  
2 their review.<sup>8</sup>  
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5  
6 The City counters the Petitioners by arguing they have not fully met the intent of WAC  
7 242-02-210(3)'s language, "substantially contain".<sup>9</sup> The City contends the Petitioners  
8 have failed to explain how a PFR that omits a required item can be said to "substantially  
9 comply" with the rule. The City asserts the regulation requires that a copy "of the  
10 applicable provisions of the document being appealed" be attached to the PFR. The  
11 City reiterates that the Petitioners are challenging the 2009 Comprehensive Plan and it  
12 was not attached to the PFR.<sup>10</sup>  
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19 The City disputes the Petitioner's interpretation of WAC 242-2-210(3) and the language  
20 "if directed by the board." The City argues that, in fact, the requirement of the full  
21 Comprehensive Plan is clearly stated in the second sentence of the rule, which  
22 provides:  
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25  
26 "Petitioner shall provide the board with a copy of the entire document  
27 being appealed within thirty days of filing a petition for review, unless  
28 otherwise directed by the board."  
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31 The City asserts that they have suffered harm because of the failure to include the full  
32 Comprehensive Plan as part of the PFR. The City contends that given the several  
33 iterations of the restated issues developed by the Petitioners, many without specific  
34 citations to the Comprehensive Plan, the City is forced to guess as to how the  
35 Petitioners' legal issues relate to the Plan itself.<sup>11</sup>  
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#### 40 **Board Discussion and Analysis**

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42 While the City relies on WAC 242-02-210 as the basis for its contention that the full  
43 Comprehensive Plan should have been submitted as an attachment to the PFR, the  
44 cited rule is not the beginning point for the Board's analysis. RCW 36.70A.290(1)  
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48 <sup>8</sup> Petitioners' Response, at 5

49 <sup>9</sup> City's Reply, at 2-3

50 <sup>10</sup> City's Reply, at 3-4

<sup>11</sup> City's Motion, at 4

1 requires only that the PFR is to “include a detailed statement of issues presented to the  
2 board”, which the Petitioners supplied. However, RCW 36.70A.270(7) authorizes the  
3 adoption of Rules of Practice and Procedure to facilitate matters, which the Board has  
4 done with WAC 242-02.  
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8  
9 The City’s interpretation of WAC 242-02-210 is, however, in error as not only does the  
10 rule’s opening sentence clearly states, “A petition for review shall *substantially contain*”  
11 but both 242-02-210(2)(d) and 242-02-210(3) denote it is the “document being  
12 appealed” that is to be provided with the PFR. Here, that “document” is Ordinance  
13 2009-14 as the Petitioners are not challenging the Poulsbo Comprehensive Plan in its  
14 entirety but rather the amendments to that plan effectuated by Ordinance 2009-14.  
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20 In this case, the Petitioners submitted a detailed statement of issues as well as a full  
21 copy of Ordinance 2009-14, and therefore complied with both the GMA and the WAC’s  
22 requirements. Thus, the City’s Motion to Dismiss this PFR is **DENIED**.  
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26 **B. City’s Motion to Dismiss Kitsap Citizens for Responsible Planning (KCRP) due**  
27 **to lack of Organizational Standing.**  
28

29  
30 On March 11, 2010, Tom Donnelly on behalf of KCRP, notified the Board of that group’s  
31 withdrawal from the case.<sup>12</sup> Thus, there is no need for the Board to respond to the City’s  
32 Motion to Dismiss KCRP as this party has voluntarily withdrawn from the matter.  
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36 **C. City’s Motion to Dismiss Legal Issue 15, Challenging the Validity of the**  
37 **Poulsbo Urban Growth Area (UGA) for Lack of Jurisdiction.**  
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39 *Position of the Parties*  
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41 In regard to Issue 15, the City contends the Board lacks jurisdiction based on three  
42 things – the issue is untimely; the City has no authority to size, or downsize, UGAs; and,  
43 even if the City had authority, a UGA boundary can only be challenged when there is an  
44 adjustment to the population allocated to the City.<sup>13</sup>  
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50 <sup>12</sup> Notice of Withdrawal of Petitioner KRCR, filed on March 11, 2010.

<sup>13</sup> County’s Motion to Dismiss, at 7-8

1 Petitioners respond by stating that the City has mischaracterized this issue as an  
2 untimely challenge to the UGA's size but, in actuality, Petitioners' challenge is to the use  
3 of unrealistically low building densities for planning purposes, which will result in sprawl  
4 and the continuation of an oversized UGA.<sup>14</sup> Petitioners further assert that the City's  
5 failure to change the population allocation is long overdue as it has remained constant  
6 since 1998 despite analysis to the contrary.<sup>15</sup>  
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12 In rebuttal, the City reiterates that this legal issue relates only to the boundaries of the  
13 UGA, in other words, the UGA's size, and the City has no authority over setting these  
14 boundaries. In regard to the Petitioners' claims as to population allocation, the City  
15 contends the Petitioners provided no citation to legal authority for the proposition that a  
16 city has a duty to reallocate population to/from its UGA or that a city has the power to  
17 establish/revise its UGA.<sup>16</sup>  
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## 23 **Board Discussion and Analysis**

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26 This Legal Issue, as set forth in the Board's March 17, 2010 Prehearing Order, is  
27 bifurcated into two parts as follows:  
28

29 *Issue 15: Violate RCW 36.70A.110(1), .110(2), and .110(3) by:*  
30

31 *(a) Failing to have a UGA that is characterized by urban growth, using*  
32 *unrealistically low building densities (for planning purposes) that cause*  
33 *sprawl and excessive sizing of its UGA to accommodate both actual and*  
34 *project population growth?*  
35  
36

37 *(b) Failing to be guided by RCW 36.70A.110(3) through omission of a*  
38 *sequential order or following a sequential order for staging growth in*  
39 *implementing the goals and policies of the following chapters of its*  
40 *Comprehensive Plan: Land Use, Natural Environment, Capital Facilities,*  
41 *Housing, Economic Development, Utilities, and Transportation?*  
42  
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46 <sup>14</sup> Petitioners Response, at 12-13  
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48 <sup>15</sup> Petitioners' Response, at 13  
49

50 <sup>16</sup> County's Rebuttal, at 10-11 (Citing to *Edmonds v. Snohomish County*, CPSGMHB Case 93-3-0005, FDO (Oct. 4, 1993)(Counties allocate population), *Jensen v. City of Bonney Lake*, CPSGMHB Case 04-3-0010, FDO (Sept. 20, 2004) and *Hensley v. City of Woodinville*, CPSGMHB Case 96-3-0031, FDO (Feb 25, 1997)(Power to establish/revise UGA boundaries lies solely with counties)).

1 Although the City did not distinguish between the two parts of this legal issue, the Board  
2 sees them as asking distinct questions in relationship to the Poulsbo UGA.

3  
4 First, as to the sizing of the UGA. The Board concurs with Poulsbo in that the  
5 establishment and revision of UGAs is a duty the GMA places with counties and not  
6 cities, although the GMA does require a county to consult with its cities as to UGA  
7 boundaries.<sup>17</sup> In addition, the starting point for the sizing of an UGA – allocation of  
8 OFM population projections - is also within the ultimate discretion of Kitsap County.<sup>18</sup>  
9 Thus, the City of Poulsbo has no power, in and of itself, to delineate the UGA or modify  
10 population allocations. Although Petitioners' contend they are not challenging the  
11 sizing of the UGA, Legal Issue 15(a) expressly asserts a violation founded on just that,  
12 with emphasis as to the population allocation. Specifically, within their response  
13 Petitioners' state:<sup>19</sup>

14  
15 The City's failure to change a UGA boundary can be challenged when the  
16 population allocation to the city is so long overdue ... Kitsap County and  
17 the City have not changed the population allocation ...  
18

19  
20 As noted above, Poulsbo has no authority to (1) change a UGA boundary or (2) change  
21 the population allocation. These are responsibilities granted by the GMA to Kitsap  
22 County who is not a party to this matter. Without authority to perform the functions of  
23 UGA sizing set forth in RCW 36.70A.110, the City of Poulsbo cannot be found in  
24 violation of the GMA in this regard. Therefore, the City's Motion to Dismiss is  
25 **GRANTED** as to Legal Issue 15(a).  
26  
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28  
29 Second, as to sequential ordering of growth within the UGA, this is something the City  
30 of Poulsbo has the authority to address within its municipal boundaries. RCW  
31 36.70A.110(3) establishes a hierarchy of areas into which urban growth should first be  
32 directed so as to further the goals and requirements of the GMA and Legal Issue 15(b)  
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45 <sup>17</sup> RCW 36.70A.110(1): Each *county* ... shall designate an urban growth area or areas ... [Emphasis  
46 added]; *Hensley v. Snohomish County*, Case 96-3-0031 (cited by Poulsbo); See also our colleagues:  
47 *Petree, et al v. Whatcom County*, Case No. 08-2-0021c, FDO at 21-22 (Oct. 13, 2008). RCW  
48 36.70A.110(2): Each county ... shall begin *consulting* with each city located within its boundaries and  
49 each city shall *propose* the location of an urban growth area... [Emphasis added]

50 <sup>18</sup> *Benayora, et al v. City of Redmond*, Case No. 95-3-0072c, FDO at 17 (March 25, 1996); *Vashon-  
Maury, et al v. King County*, Case No. 95-3-0008c, FDO at 34 (Oct. 23, 1995).

<sup>19</sup> Petitioners' Response, at 13

1 questions the City's compliance with this hierarchy. Thus, the City's Motion to Dismiss  
2 is **DENIED** as to Legal Issue 15 (b).  
3

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5  
6 Petitioners are reminded that in preparing their briefing for the Hearing on the Merits ,  
7 the *size* and *boundary* of the Poulsbo UGA is not subject to challenge in this proceeding  
8 and, therefore, any arguments submitted in that regard will be disregarded by the  
9 Board. What does remain of Legal Issue 15 is limited to RCW 36.70A.110(3)'s  
10 language pertaining to the sequential ordering of growth.  
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15 **D. City's Motion to Dismiss Legal Issue 20, Challenging the City's Annexation of**  
16 **Unincorporated Areas Within the Poulsbo UGA for Lack of Jurisdiction.**  
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18 Legal Issue 20 contends the City has violated the GMA by annexing and converting  
19 undeveloped land lacking infrastructures. Petitioners and Respondents both  
20 acknowledge that the Board lacks jurisdiction over annexations.<sup>20</sup> Having considered  
21 the arguments presented by the parties in regard to this issue, the Board desires to  
22 receive further briefing on the issue raised as it relates to sprawl and infrastructure  
23 adequacy within the annexed areas. In their upcoming briefs and oral arguments, the  
24 parties should be prepared to expand on their previous assertions in this regard. The  
25 City's Motion to Dismiss Legal Issue 20 is **DENIED**.  
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32 **E. City's Motion to Dismiss Legal Issue 25, Challenging the City's Compliance**  
33 **with the Grant Eligibility Requirements of RCW 36.70A.500(3), for Lack of**  
34 **Jurisdiction.**  
35

36 With Legal Issue 25, Petitioners allege that the City has violated RCW 36.70A.500(3)  
37 which provides, in relevant part:  
38  
39

40 In order to qualify for a grant, a county or city shall:  
41

42 (a) Demonstrate that it will prepare an environmental analysis pursuant to  
43 chapter 43.31C RCW and subsection (2) of this section that is integrated  
44 with a comprehensive plan ....  
45

46 (b) Address environmental impacts and consequences, alternatives, and  
47 mitigation measures in sufficient detail ...  
48  
49 ...  
50

<sup>20</sup> City's Motion, at 8; Petitioners' Response, at 14

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis.

...

### *Position of the Parties*

The City asserts the Board has no authority to determine if the City meets the qualifications for grants from the Department of Commerce because the Board's authority is limited to development regulations and comprehensive plans, not grant qualifications.<sup>21</sup> The City contends there is nothing in RCW 36.70A.500(3) which suggests the Board has authority to determine whether those qualifications have been met, and for that reason, Legal Issue 25 should be dismissed.<sup>22</sup>

Petitioners' state they do not argue that the City should not receive the grants, rather the City is not meeting the required obligations under RCW 36.70A500(3). The Petitioner's argue that the Board's jurisdiction includes decisions relating to whether "a state agency, county or city planning under this chapter [GMA] is not in compliance with the requirements of this chapter" (RCW 36.70A280(1))

The Petitioners argue that the requirements of RCW 36.70A500(3) include the phrase - "In order to qualify for a grant, a county or city shall..." and, given RCW 36.70A.280(1)(a)'s grant of authority to the Board to determine compliance with the GMA's requirements, the Board clearly has jurisdiction.<sup>23</sup> Petitioners also contend the City's argument implies that some other alternative adjudicative body has jurisdiction but the City fails to identify that body.<sup>24</sup>

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<sup>21</sup> City's Motion, at 9

<sup>22</sup> City's Motion, at 9

<sup>23</sup> Petitioners' Response, at 15

<sup>24</sup> Petitioners' Response, at 15



1 In reply, the City contends Petitioners misconstrue the GMA's intent by selectively  
2 choosing two different unrelated sections of the statute for their argument.<sup>25</sup> The City  
3 argues RCW 36.70A.280(1)(a) gives the Board authority over a city's "compliance with  
4 the requirements of the chapter as it relates to plans, development regulations or  
5 amendments" and, since RCW 36.70A.500(3) does not relate to the adoption of plans or  
6 development regulations, but instead relates to matters that a city or county must  
7 demonstrate to qualify for a grant, RCW 36.70A.280(1)(a) does not give the Board  
8 authority to determine if grant requirements are met.<sup>26</sup>

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16 The City further asserts the Petitioners misread the entirety of the meaning of RCW  
17 36.70A.500(3).<sup>27</sup> The City points to 36.70A.500(1) which directs the Department of  
18 Community Trade and Economic Development [now the Department of Commerce] to  
19 develop grant criteria, monitor the program, and select grant recipients with state  
20 agencies participating in the grant program through the provision of grant funds and  
21 technical assistance.<sup>28</sup> Thus, if the Department of Commerce determined the City was  
22 not meeting the requirements of the grant, Commerce could commence an action  
23 against the City to ensure compliance.<sup>29</sup>

### 30 **Board Discussion**

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32 Through RCW 36.70A.500, the GMA creates a duty for the Department of Commerce to  
33 perform a variety of tasks, including the review and award grant requests based on the  
34 quality and qualifications set forth in RCW 36.70A.500(3). The City is to follow through  
35 on the criteria established by the Department of Commerce for the grant request. RCW  
36 36.70A.500(1) directs that "[Commerce] shall provide management services for the fund  
37 created by RCW 36.70A.490" and further states that Commerce "shall develop the grant  
38 criteria, monitor the grant program, and select grant recipients." RCW 36.70A.500(6)  
39 further states that "State agencies shall work with grant recipients to facilitate state and  
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47 <sup>25</sup> City's Reply, at 15

48 <sup>26</sup> City's Reply, at 15

49 <sup>27</sup> City's Reply, at 15

50 <sup>28</sup> City's Reply, at 15

<sup>29</sup> City's Reply, at 15

1 local project review processes that will implement the projects receiving grants under  
2 this section.” Thus, it is clear to the Board that it is the Department of Commerce who  
3 has the responsibility to evaluate, award, and monitor grants.  
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7 The Board does note that RCW 36.70A.500(3) states that to qualify for a grant, a city or  
8 county must “demonstrate substantial progress toward compliance” with the GMA and,  
9 it is the Board, not Commerce, that is charged with determining compliance. However,  
10 the Board does not read this provision as granting the Board authority to determine  
11 whether or not a jurisdiction has complied with RCW 36.70A.500’s provision but rather it  
12 merely provides guidance for Commerce in determining when a jurisdiction is  
13 *demonstrating* substantial progress. Thus, the language of .500(3)(e) provides that if a  
14 jurisdiction subject to a Board-ordered finding of non-compliance has not achieved  
15 compliance within six months, it is not *demonstrating progress* and therefore should not  
16 be eligible for grant monies. With no outstanding finding of non-compliance against  
17 the City of Poulsbo, this criterion is not applicable.  
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27 The Petitioners’ challenge as set forth in this legal issue is not with the Board but with  
28 the Department of Commerce, for potential violations of RCW 36.70A.500(3)’s grant  
29 qualification criteria. The City’s Motion to Dismiss Legal Issue 25 is **GRANTED**.  
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33 **F. City’s Motion to Dismiss Legal Issue 26, Challenging the City’s SEPA**  
34 **Compliance for Petitioner’s Failure to Exhaust Administrative Remedies.**  
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36 *Position of the Parties*  
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38 The City asserts that it followed all of the requirements of SEPA - issuing a Draft  
39 Supplemental Environmental Impact Statement (DSEIS) on July 1, 2009 and a Final  
40 SEIS (FSEIS) on September 29, 2009, using the EIS prepared for the City  
41 Comprehensive Plan in 1994 as the base document of supplementation.<sup>30</sup> The City  
42 further asserts that because the Petitioners did not appeal these documents under the  
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<sup>30</sup> City’s Motion, at 9

1 SEPA procedures, they did not exhaust all administrative remedies available to them  
2 and are therefore barred from raising an appeal now.<sup>31</sup>  
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6 The City cites multiple examples of cases in which the Central Puget Sound Board has  
7 required petitioners to exhaust a jurisdiction's SEPA appeal process before seeking  
8 review by the Board, including *Master Builders v. Pierce County* and *Tulalip Tribes v.*  
9 *Snohomish County*, which spelled out the exhaustion requirements for the Board.<sup>32</sup>  
10  
11

12 These requirements are:<sup>33</sup>  
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- 14 (1) whether administrative remedies were exhausted;
- 15 (2) whether adequate remedy was available;
- 16 (3) whether adequate notice of appeals procedure had been given;
- 17 (4) whether exhaustion would have been futile.
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- 19

20 The City asserts the Petitioners fail in all regards.  
21  
22

23 First, as to the availability of an adequate remedy, the City points to its adopted process  
24 for appealing the Final SEIS pursuant to Section 16.04.250 of the Poulsbo Municipal  
25 Code, which sets forth the appeals procedures for SEPA documents.<sup>34</sup> With this  
26 remedy available but not utilized, the City contends the Petitioners failed the second  
27 requirement.<sup>35</sup>  
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33 The City argues that although notice was not given to the Petitioners for the Draft SEIS  
34 or the Final SEIS, because they did not comment on the Draft SEIS and did not request  
35 the Final SEIS issued on September 29, 2009, the Final SEIS was posted on the City's  
36 Website and could also be viewed at the Poulsbo Public Library and the Poulsbo  
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45 <sup>31</sup> City's Motion, at 10

46 <sup>32</sup> City's Motion, at 9 citing: *Master Builders* - CPSGMHB Case No. 02-3-0010, Order on Motions to  
47 Dismiss SEPA Claims (Oct.21, 2002); *Tulalip Tribes* - CPSGMHB Case No. 99-3-0013, Final Decision  
48 and Order (Jan. 31, 2000)

49 <sup>33</sup> City's Motion at 9 citing *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Order on  
50 Motion at 5-6 (June 5, 1995).

<sup>34</sup> City's Motion, at 10-11.

<sup>35</sup> City's Motion, at 12

1 Planning Department.<sup>36</sup> Finally, the City argues an appeal by the Petitioners would not  
2 have been futile.<sup>37</sup>  
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5  
6 Petitioners argue that their challenge is not specifically to the City's compliance with  
7 SEPA and the SEIS. Instead, their concern is with the lack of coordinated consistencies  
8 between the SEIS, the Comprehensive Plan, and Buildable Lands Analysis, for which  
9 they contend the City has failed to coordinate the facts between these documents.<sup>38</sup>  
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14 The City responds, quoting the language of Legal Issue 26 as stated in the Prehearing  
15 Order, by pointing out that concerns cited by Petitioners referenced RCW 43.21C and  
16 this clearly gives rise to an appeal of the SEIS's adequacy for which exhaustion is  
17 required.<sup>39</sup>  
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## 20 **Board Discussion**

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22 The Board agrees with the City. The Board has remained consistent in its requirements  
23 to exhaust available administrative remedies prior to seeking SEPA review before the  
24 Board. The burden is on the Petitioners, when challenged, to demonstrate that they  
25 have, in fact, exhausted administrative remedies before appealing to the Board. The  
26 City has an administrative process in place (Poulsbo Municipal Code 16.04.250) for the  
27 public to follow and Petitioners did not utilize this process.  
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34 The Board also agrees the Petitioners have apparently shifted their argument from the  
35 original language of Legal Issue 26, which challenged specific RCWs related to SEPA  
36 to challenging inconsistencies in a variety of related documents. It would have been  
37 more appropriate for the Petitioners to withdraw their issue. The City's Motion to  
38 Dismiss is **GRANTED**.  
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48 <sup>36</sup> City's Motion, at 12-13

49 <sup>37</sup> City's Motion, at 14

50 <sup>38</sup> Petitioners' Response, at 15

<sup>39</sup> City's Reply, at 16

1 **G. City's Motion to Dismiss Legal Issue 33, the Board Lacks Jurisdiction Over**  
2 **Petitioner's Substantive Due Process and Takings Claim.**  
3

4 The Petitioners have withdrawn Legal Issue 33 from the Petition for Review.<sup>40</sup> Legal  
5 Issue 33 is **DISMISSED**.  
6  
7

8 **H. City's Motion to Dismiss Legal Issue 4, Because the Kitsap Navel Base is Not**  
9 **in or Adjacent to the Poulsbo City Limits.**  
10

11 With Legal Issue 4, Petitioners allege that the City failed to notify and seek facts and/or  
12 recommendations from the military commander of Naval Base Kitsap, contending this  
13 violates RCW 36.70A.530. Although this GMA provision has various subsections, the  
14 one related to requesting notice is set forth in RCW 36.70A.530(4), which provides:  
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19 As part of the requirements of RCW. 36.70A.070(1) each county and city  
20 planning under 36.70A.040 that has federal military installation, other than  
21 a reserve center, that employees one hundred or more personnel and is  
22 operated by the United States Department of Defense within or adjacent  
23 to its border, shall notify the commander of the military installation of the  
24 county's or city's intent to amend its comprehensive plan or development  
25 regulations to address lands adjacent to military installations in order to  
26 ensure those lands are protected from incompatible development.  
27  
28

29 *Position of the Parties*  
30

31 The City asserts, based on the Petitioners' own statement, the Navel Base is neither  
32 "within or adjacent to" the borders of the City of Poulsbo but, rather, is located 0.7 miles  
33 from the City limits. Given the fact that it is neither within or adjacent to the City Limits,  
34 the City contends Legal Issue 4 should be dismissed.<sup>41</sup> The City cites *City of Arlington*  
35 *v. Central Puget Sound Hearings Board*, which defines "adjacent" as synonymous with  
36 "touching" or "abutting" and because the base is 0.7 miles from the City limits, it neither  
37 touches or abuts.<sup>42</sup>  
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47 <sup>40</sup> Petitioners' Response, at 16  
48 <sup>41</sup> City's Motion, at 15

49 <sup>42</sup> City's Motion, at 15 (Citing *City of Arlington* - 138, Wn. App. 1, 24, 154 P.3d 936 (2007)). The Board  
50 notes the correct citation for the *Arlington* case is that of the Supreme Court who, with its 2008 decision  
published at 164 Wn.2d 768, adopted verbatim the Court of Appeals' 2007 decision.

1 Petitioners contend that RCW 36.70A.530 must be read in its entirety to understand the  
2 intent of the legislation regarding the term “adjacent”. They cite RCW 36.70A.530(1)  
3 which provides “...it is a priority of the state to protect the land surrounding our military  
4 installations from incompatible development” and .530(3) which states that a city or  
5 county “should not allow development in the vicinity of a military installation that is  
6 incompatible with the installations ability to carry out its mission requirements.”<sup>43</sup> The  
7 Petitioners assert that the “land surrounding our military installations” and “in the vicinity  
8 of a military installation” indicates “adjacent” should be read to include development less  
9 than one mile from the base.<sup>44</sup> Petitioners further argue that the City’s analysis of the  
10 words “adjacent”, “abutting” or “touching” is misplaced in the *Arlington* case, contending  
11 the definition only applied in the Court’s ruling as to RCW 36.70A.110, and not for RCW  
12 36.70A.530.<sup>45</sup>

13  
14 The City counters that in the *Arlington* decision, the court’s language is clear, adjacent  
15 means adjacent and there is no reason not to apply the language in the case before the  
16 Board. The City argues that there is no reason to construe the word “surrounding” as  
17 mandating a different meaning than “adjacent”. Nothing in the statute suggests that a  
18 more expansive meaning of the term “adjacent” in RCW 36.70A.530 is required.

### 31 **Board Discussion**

32  
33 The Board agrees with the City on Legal Issue 4. This issue clearly addresses the  
34 requirements of special notice to the commander of the military installation as set forth  
35 in RCW 36.70A.530(4). This provision calls for a city or county to give special notice to  
36 a base “within or adjacent to its border.” The Board relies on the analysis by the courts  
37 in the *Arlington* case regarding their interpretation of the intent of “adjacent” being  
38 synonymous with “touching” or “abutting”. While the base is nearby, the base clearly  
39 does not touch or abut the city limits of Poulsbo.

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49 <sup>43</sup> Petitioners’ Response, at 16-17

50 <sup>44</sup> Petitioners’ Response, at 17

<sup>45</sup> Petitioners’ Response, at 17

1 The Board recognizes that Sections (1) and (3) of RCW 36.70A.530 use more general  
2 language to set a policy of prohibiting “incompatible development” or “development that  
3 is incompatible with the installation’s ability to carry out its mission requirements.” And,  
4 that these sections also use the broader language of “land surrounding our military  
5 installations” and “in the vicinity of” military bases. These provisions would undoubtedly  
6 allow a PFR challenging a jurisdiction’s plans which potentially created incompatible  
7 development in the vicinity of a non-contiguous military base, but only if the petitioner  
8 could prove incompatibility with the mission requirements of that base. The lay citizen  
9 activist is unlikely to be able to meet this burden of proof.

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17 In this case, Petitioner’s Legal Issue 4 addresses only the requirement of special notice  
18 to the base commander. Naval Base Kitsap is not “within or adjacent to” the City’s  
19 border. The City’s motion to Dismiss Legal Issue 4 is **GRANTED**.

20  
21  
22  
23 **I. City’s Motion to Dismiss Various Legal Issues on the Grounds that Petitioners**  
24 **Lack Participation Standing.**

25  
26 RCW 36.70A.280(2) governs the standing requirements for appearing before the  
27 Boards, providing in relevant part:

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30  
31 A petition may be filed only by....(b) a person who has participated orally  
32 or in writing before the county or city regarding the matter on which a  
33 review is being requested.

34  
35 Further guidance as to participation standing under subsection (2)b of this section is set  
36 forth at RCW 36.70A.280(4) which provides:

37  
38 [A] person must show that his or her participation before the county or city  
39 was reasonably related to the person’s issue as presented to the board.

40  
41 The Board articulated its understanding of the GMA’s requirements in *McNaughton v.*  
42 *Snohomish County* stating:<sup>46</sup>

43  
44  
45 RCW 36.70A.280(2)(b) states that “a person who has participated orally or  
46 in writing before the county or city regarding the matter on which a review  
47 is being requested” may file a petition for review of a GMA decision. In  
48 2003, the Legislature amended RCW 36.70A.280 by adding subsection  
49  
50

<sup>46</sup> CPSGMHB No. 06-3-0027, Order on Motions at 9 (Oct. 30, 2006)

1 (4) which requires a petitioner to establish standing by showing that his  
2 participation before the county or city was reasonably related to his issues  
3 presented to the Board. This addition to the statute codified the Court of  
4 Appeals decision in [*Wells v. WWGMHB*, Wn.App. 657 (2000)]...where  
5 the court held that participation standing is not issue-specific: “our  
6 conclusion [is] that the Legislature did not intend petitioners to raise  
7 specific legal issues during the local government planning process.” *Wells*,  
8 100 Wn.App. at 672. The *Wells* court held that a “matter” as intended by  
9 RCW 36.70A280(2)(b), is not the equivalent of an “issue” *Id* at 671. The  
10 court acknowledged that “all three growth management hearings boards  
11 have consistently rejected a requirement of issue-specific stand.” *Id*. The  
12 *Wells* court noted the 1996 Legislature rejected a proposed amendment  
13 that would have required petitioners to raise “issues” rather than “matters”  
14 before the local government. The *Wells* court concluded that “matter” in  
15 RCW 36.70A280(2)(b) refers to a broad subject or topic of concern or  
16 controversy.” *Id*. At 672-3. The court said “it would be unrealistic given the  
17 time and resource constraints inherent in the planning process to require  
18 each individual petitioner to demonstrate to the growth management  
19 hearings boards that he or she raised a specific legal issue before the  
20 board can consider it.” *Id* at 674. The enactment of RCW 36.70A280(4)  
21 incorporated the *Wells* holding into the GMA.  
22  
23

24  
25 Thus, as is clear from the GMA and prior holdings, participation standing is founded on  
26 comments that address the subject matter of the challenge with no requirement to raise  
27 specific legal issues. With this in mind, the Board reviews each of the City’s assertions  
28 that the Petitioners’ lack participation standing.  
29  
30

31  
32  
33 Legal Issues 1 and 4 – Naval Base Bangor

34 The City has withdrawn its participation objections to Legal Issues 1 and 4.<sup>47</sup> The Board  
35 has **dismissed Legal Issue 4** for other reasons (*infra*). The question of coordination  
36 with Navel Base Bangor remains in the case as an element of Legal Issue 1, on the  
37 limited basis of the GMA requirements for inter-jurisdictional coordination  
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43 Legal issues 6 and 38 – Industrial and Commercial Sprawl

44 The City moves to dismiss the references in Legal Issue 6 and 38 to “industrial and  
45 commercial sprawl.”<sup>48</sup> The City states that Petitioners’ Comprehensive Plan testimony  
46 was narrowly focused on housing density and population growth as the cause of sprawl,  
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50 <sup>47</sup> City’s Reply, at 6

<sup>48</sup> City’s Motion, at 5-6



1 and the City would be “blind-sided” if the Board allowed Petitioners to complain of  
2 commercial and industrial overdevelopment.<sup>49</sup>  
3  
4

5  
6 However, even the Board’s cursory reading of the exhibits and documents in this matter  
7 demonstrate the Petitioners’ repeated testimony about major commercial project at the  
8 Headwaters of Jonson Creek and other commercial/industrial development in  
9 annexation area. Perhaps their testimony in the Comprehensive Plan process focused  
10 more on residential sprawl because they knew the City was already well aware of their  
11 objections to commercial overdevelopment, The Board does not believe the City is  
12 surprised or unprepared for this argument.  
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19 In *Mariner Village v. Snohomish County* (CPSGMHB Case No. 08-3-0003, Order on  
20 Motions), which both parties cite, the Board allowed participation standing to the mobile  
21 park owners, even though their actual testimony in the hearing on the challenged  
22 ordinance was ambiguous. The Board had no difficulty in concluding that the County  
23 was aware of the objections of the mobile park owners and was not “blind-sided.”  
24  
25  
26

27 The City’s Motion to Dismiss these issues for lack of participation standing is **DENIED**.  
28  
29

30 Legal Issue 12- Agricultural Land  
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32 Legal Issue 12 alleges non-compliance with RCW 36.70A.070(1) and RCW 36.70A.177.  
33 RCW 36.70A.177 (1)-(4) contains special provisions concerning “agricultural lands of  
34 long-term commercial significance, a term defined in RCW 36.70A.030(10). The City  
35 contends that Petitioners failed to testify about protection of “agricultural uses, the  
36 agricultural economy, or agricultural soils.”<sup>50</sup> The Board agrees. Though the Petitioners’  
37 comments in the record say much about protecting forests, open space and wildlife  
38 habitat, the Board does not find in their testimony the emphasis on agricultural lands of  
39 long-term commercial significance that is indicated in the GMA’s designation and  
40 protection of agricultural lands.  
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50 <sup>49</sup> City’s Reply at 6, 10

<sup>50</sup> City’s Motion, at 5; City’s Reply, at 8

1 The portion of Legal issue 12 challenging compliance with RCW 36.70A.177 is  
2 **DISMISSED** for lack of participation standing.  
3

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5  
6 Legal Issue 13- Natural Resource Land Notice to Title

7 Petitioners have **WITHDRAWN** Legal Issue 13.<sup>51</sup> The objection to lack of participation  
8 standing is moot.  
9

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11  
12 Legal Issue 14- Multi-Modal Transportation

13 The City moves to dismiss Petitioners' reference to multi-modal transportation in Legal  
14 Issue 14, on the grounds that Petitioners did not specifically raise transportation  
15 deficiencies in their public testimony.<sup>52</sup> The Board reads Legal Issue 14 as simply a  
16 listing of the negative impacts of low-density sprawl as derived from the GMA Planning  
17 Goals. In this issue, the Petitioners allege that low-density sprawl is non-compliant with  
18 the GMA Planning Goals because it does not support multi-modal transportation, leads  
19 to expansion of the UGA, results in development that destroys critical habitat, and is not  
20 an efficient infrastructure.  
21

22 Thus, Legal Issue 14 simply states another argument in support of the Petitioners'  
23 challenge. In this matter, the City was aware that Petitioners objected to the density  
24 standards on which the City was basing its Plan. Petitioners are entitled to spell out  
25 additional legal issues for why they think those densities are non-compliant. The City is  
26 not "blind-sided" by the requirements that the Plan must be guided by the GMA  
27 Planning Goals.<sup>53</sup>  
28

29 In *McNaughton v. Snohomish County*,<sup>54</sup> the Board addressed a similar Motion to  
30 Dismiss legal issues for non-participation. Unlike the present case, McNaughton had  
31 only made one public statement and submitted one letter of comment in the County's  
32 process. The County sought to dismiss every legal issue not directly derived from that  
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48 <sup>51</sup> Petitioners' Response, at 10

49 <sup>52</sup> City's Motion, at 5; City's Reply at 8-9

50 <sup>53</sup> See *Mariner Village*, supra at 9.

<sup>54</sup> CPSGMHB Case No. 06-3-0027, Order on Motions (Oct. 30, 2006)

1 limited testimony, on the theory that participation standing is allowed only with the  
2 respect to legal issues expressly raised by a petitioner during the public process. The  
3 Board noted that during the County's public process, McNaughton had clearly indicated  
4 its opposition to the challenged ordinances. The Board concluded: "In its participation  
5 before the County Council, McNaughton was not required to detail the alleged  
6 deficiencies or articulate its legal theories."<sup>55</sup>  
7  
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12 Accordingly, the City's Motion to Dismiss the reference to multi-modal transportation  
13 from the legal issue concerning GMA Goals for lack of participation standing is **DENIED**.  
14  
15

16  
17 Legal Issue 21- County Wide Planning Policies  
18

19 The City states that Petitioners failed to testify concerning the City's "altering its land  
20 use powers" in the residential densities it chose for its comprehensive plan.<sup>56</sup> The Board  
21 reads this Legal Issue as simply stating another argument in support of the Petitioners'  
22 challenge. Testimony in a public process does not need to spell out all of Petitioners'  
23 legal theories, only apprise the City Council of the subject matter of the concern. As said  
24 before, the City was aware that Petitioners objected to the density standards on which  
25 the City was basing its Plan. Petitioners are entitled to spell out additional legal bases  
26 for why they think densities are non-compliant.  
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33 The City's Motion to Dismiss Legal Issue 21 for lack of participation is **DENIED**.  
34 However, the Board is cognizant of the City's substantive challenge to Petitioners'  
35 reliance on RCW 36.70A.210(1). The Board reserves this argument to its decision on  
36 the merits.  
37  
38  
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40  
41 Legal Issue 25- Grant Requirements  
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43 The City has **withdrawn** its motion to dismiss this issue for lack of participation  
44 standing.<sup>57</sup> However, on the merits, the Board dismissed Legal Issue 25 for the reasons  
45 given *infra*.  
46  
47  
48

49 <sup>55</sup> *Id.*

50 <sup>56</sup> City's Motion, at 5; City's Reply at 9-10

<sup>57</sup> City's Reply, at 6

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4 **II. ORDER**  
5

6 Based upon review of the GMA, Board's Rules of Practice and Procedure, briefing and  
7 exhibits submitted by the parties, case law and prior decisions of this Board, and having  
8 deliberated on the matter, the Board enters the following ORDER:  
9  
10

- 11  
12  
13 1. The City's Motion to Dismiss the Petition for Review for Petitioners' non-  
14 compliance with WAC 242-02-210 is **denied**.  
15  
16 2. The City's Motion to Dismiss Legal Issues 15(a), 25, 26, 33, and 4 are  
17 **granted**.  
18  
19 3. The City's Motion to Dismiss Legal Issues 15(b) and 20 are **denied**.  
20  
21 4. The City's Motion to Dismiss Petitioners' Participation Standing; Legal  
22 Issues 6, 18, 21, 24, and 38 or portions of those issues for Petitioners lack  
23 of participation standing are **denied**. The portion of Legal Issue 12  
24 challenging compliance with RCW 36.70A.177 for lack of participation  
25 standing is **granted**. Legal Issues 13 and 25 were **withdrawn**.  
26  
27

28 This Order of Dismissal should not be construed as a Board determination as to  
29 whether the City of Poulsbo substantively complies with the relevant goals and  
30 requirements of the GMA.  
31  
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34  
35 So ORDERED this 11th day of May, 2010.  
36

37 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD  
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42 \_\_\_\_\_  
43 Dave Earling  
44 Board Member  
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Margaret Pageler  
Board Member

## LEGAL ISSUES

### Restated Following Order on Dispositive Motions

#### I. Public Participation:

**Issue 1:** Fail to utilize citizen participation as required by RCW 36.70A.020(11) by not encouraging the direct involvement of citizens in the planning process, such as citizens' advisory or stakeholders' groups, and by failing to ensure coordination between communities and jurisdictions, such as Naval Base Kitsap? [Wold Issue 1I]

**Issue 2:** Fail to comply with RCW 36.70A.130(2)(a) and 36.70A.140 by not providing appropriate opportunity for public comment, without establishing and broadly disseminating a public participation program providing early and continuous participation and, to the extent any such program existed, follow the program consistently during development of its Comprehensive Plan (CP)? [Wold Issue 1I]

**Issue 3:** Violate the public participation notice provisions of RCW 36.70A.035 in its Comprehensive Plan and Public Participation Plan (CP Chapter 11) by providing information only in the difficult-to-find-and-read legal notices in the newspaper and on a clipboard at the post office and public library, not notifying public/private groups, and by not notifying individuals who requested notification? [Wold Issue 4]

#### II. Communication with Military Installations

~~**Issue 4:** Violate RCW 36.70A.530 by failing to notify and seek facts/recommendations from the military commander of Naval Base Kitsap, a major unit of which, Submarine Base Bangor, is located 0.7 miles from the current City limits? [Wold Issue 23]~~

#### III. Environment, Critical Areas, and Best Available Science (BAS)

**Issue 5:** Violate RCW 36.70A.020(9), 36.70A.020(10), and 36.70A.070(1) by not reviewing flooding and stormwater run-off and through failure to protect ground water, aquifer recharge, water quality, and to provide corrective actions to mitigate or cleanse those discharges to the waters of Puget Sound? [Wold 1H and 7 (both in part)]

**Issue 6:** Fail to be guided by and comply with RCW 36.70A.020(8) when the CP encourages low-density housing and industrial and commercial sprawl that will harm

1 natural resource industries, for example, fostering the continued decline of the Puget  
2 Sound fishing and shellfish harvest? [Wold Issue 1F]

3  
4 **Issue 7:** Violate RCW 36.70A.020(9), 36.70A.020(10), and 36.70A.172(1) by not giving  
5 special consideration to conservation or protection measures necessary to preserve or  
6 enhance anadromous fisheries and preserve wildlife and by not considering best  
7 available science in this regard, as one example, in development regulation policy NE-  
8 6.9? [Wold Issues 1H (in part), 13 and 15(in part)]

9  
10 **Issue 8:** Violate RCW 36.70A.070, RCW 36.70A.172 and 36.70A.020(9) by failing to  
11 designate or protect Wildlife Habitat Conservation Areas (WHCA) and their connectivity  
12 and having inconsistent documents, given that the City's Critical Areas Ordinance  
13 (CAO) provides a mechanism to protect WHCA yet neither the CAO nor the  
14 Comprehensive Plan identify these areas within the City or the Urban Growth Area  
15 (UGA), leaving it to planners or developers to identify these areas without the benefit of  
16 best available science? [Wold Issue 15 (in part) and 1G (in part)]

17  
18 **Issue 9:** Violate RCW 36.70A.060(6), RCW 36.70A.020(9) and .020(10) by designating  
19 open space within the critical area buffers and because the City is amending its  
20 planning regulations to meet the needs of development adjacent to open spaces that  
21 now exist in place of critical area buffers? [Lee 4.30, 4.4 and 4.23 (in part)]

#### 22 **IV. Natural Resources**

23  
24 **Issue 10:** Fail to adopt regulations protecting natural resource lands as required by  
25 RCW 36.70A.020(8), 36.70A.040, and 36.70A.210? [Lee Issue 4.6, 4.23 (in part)]

26  
27 **Issue 11:** Violate RCW 36.70A.020(6), 36.70A.040, 36.70A.050, 36.70A.060,  
28 36.70A.140(a)-(b), 36.70A.165 and 36.70A.177 regarding designated forest lands (see  
29 CP Goal LU-13 and Policy LU-13.5) and, for example, there are existing lands within the  
30 City limits and UGA which the Department of Natural Resources has categorized as  
31 "Designated Forestry," which were not identified and mapped in the Comprehensive  
32 Plan? [Lee Issue 4.5, 4.8, 4.23 (in part)]

33  
34 **Issue 12:** Violate RCW 36.70A.070(1) by not protecting areas for agricultural and  
35 timber production and violate RCW 36.70A.177(1)-(4) by not conserving agricultural  
36 lands, encouraging the agricultural economy and encouraging non-agricultural uses to  
37 be limited to lands with poor soils or otherwise not suitable for agricultural purposes?  
38 [Wold Issues 7 (in part) and 14]

39  
40 **Issue 13:** Violate RCW 36.70A.060 and 36.70A.170 by failing to adopt regulations  
41 requiring notice to title that property is within or near designated resource lands? [Lee  
42 Issues 4.7 and 4.9]

#### 43 **V. Urban Growth Areas and Population**

44  
45 **Issue 14:** Fail to be guided by and comply with RCW 36.70A.020(1), .020(2), .020(3),  
46 and .020(4) when it adopted low and/or irregular housing densities and sprawl in the  
47 City, did not encourage efficient multimodal transportation systems, artificially inflated  
48 the need for UGA acreage in the City and County and encouraged urban growth and  
49  
50

development in critical habitat, non-urbanized areas, and areas with inadequate public facilities? [Wold 1A, 1B, 1C and 1D]

**Issue 15:** Violate RCW 36.70A.110(1), .110(2), and .110(3) by:

(a) ~~Failing to have a UGA that is characterized by urban growth, using unrealistically low building densities (for planning purposes) that cause sprawl and excessive sizing of its UGA's to accommodate both actual and projected population growth? [Wold Issue 2A and 2B, Lee Issue 4.19, Lee Issue 4.28 (in part)]~~

(b) Failing to be guided by RCW 36.70A.110(3) through omission of a sequential order or following a sequential order for staging growth in implementing the goals and policies of the following chapters of its Comprehensive Plan: Land Use, Natural Environment, Capital Facilities, Housing, Economic Development, Utilities, and Transportation? [Lee Issue 4.25]

**Issue 16:** Violate RCW 36.070A.020(9), RCW 36.70A.110(2) and RCW 36.70A.160 and WAC 365-195-335 by not including greenbelts or open space corridors within and between the UGA's that are connected, including wildlife habitat and travel corridors, and violate RCW 36.70A.070(1) by not protecting areas for recreation and open space corridors? [Wold Issues 1G, 2C, 7 (in part) and 12; Lee Issue 4.3]

**Issue 17:** Violate RCW 36.70A.040 by reporting and implementing an inconsistent analysis of the population allocated to a city or county from the most recent 10-year population forecast by OFM in the Comprehensive Plan, SEIS, Buildable Lands Analysis, County and City Growth allocations, and Capital Facilities Plan? [Wold 5]

**Issue 18:** Violate RCW 36.70A.130(1)(a), .130(1)(c), .130(1)(d), .130(2)(a), .130(2)(b), .130(3)(a) and .130(3)(b) by not appropriately reviewing the population, housing densities, extent to which urban growth has located within the City, the unincorporated portion of the UGA and the County, when, for example, the population allocations in planning documents are inconsistent with the actual population growth and population allocations that the City and Kitsap County were supposed to update in 2009, but have not done so? [Wold 10]

**Issue 19:** Violate RCW, 36.70A.020(1), 36.70A.110(2), and 36.70A.115 by manipulating its methodology for calculating projected densities and population allocations and by ignoring historical growth patterns that have exceeded projected population density goals across all housing densities? [Lee 4.28]

**Issue 20:** Violate RCW 36.70A.110(3) and 36.70A.070(3)(e) by annexing and converting undeveloped lands with little or no infrastructure ahead of prepared, impermeable, infrastructure-rich lands and violate RCW 36.70A.070(3), RCW 36.70.020 (1,2,6,8,9,12) because the City is not financially prepared to provide services for an excessive population growth allocation, excessive growth or oversized UGA's? [Lee 4.20 and 4.21]

## **VI. County-Wide Planning Policies**

**Issue 21:** Violate RCW 36.70A.210(1) by altering its land use powers based on direction from Kitsap County and county planning policies when, for example, the building densities used by the City were based on County direction rather than on City planning densities, documents and regulations and on-the-ground facts and actions? [Wold Issue 16]

## **VII. Buildable Lands Analysis**

**Issue 22:** Violate RCW 36.70A.215(3)(b) and 36.70A.215(3)(c) by not reviewing housing needs and density ranges to determine the amount of land needed for the remaining 20-year planning period when both the Comprehensive Plan and SEIS are based on a hypothetical housing density with no correlation to each other, to on-the-ground facts, accurate records, and realistic projections of planning and development within the City for the past decade? [Wold Issue 20]

**Issue 23:** Violate RCW 36.70A.215(1)(a) and RCW 36.70A.215(2)(a) by failing to collect data on urban and rural land uses, development, critical areas, and capital facilities necessary to determine quantity and type of land suitable for development and failing to determine the urban densities achieved within the UGA by comparing actual growth and development that has occurred with growth and development assumptions, targets, and objectives in the CWPP's (adopted in 1992 and revised in August 2001, December 2003, November 2004 and November 2008) and the City's Comprehensive Plan, such as in LU-2.1 and the SEIS? [Wold Issues 17 and 18]

**Issue 24:** Violate RCW 36.70A.215 by enforcing only minimum densities and not planning for and mandating maximum densities as in LU-2.1, LU-9.3 and the SEIS and violate RCW 36.70A.215(2)(d) and 36.70A.215(4) when, for example, the City determined that there were inconsistencies regarding housing densities and population numbers, but still took action that exacerbated the inconsistencies rather than reduced them? [Lee 4.26 and Wold Issue 19]

## **IX. Growth Management Grants**

~~**Issue 25:** Violate RCW 36.70A.500(3)(a) by using grants, but not preparing the required integrated environmental analysis and, therefore, failing to address environmental impacts and consequences as required by .500(3)(b) and .500(3)(d)? [Wold Issue 21 and 22]~~

## **X. State Environmental Policy Act (SEPA)**

~~**Issue 26:** Violate RCW 43.21C(010, 020, 030, 031) by acting arbitrarily in its adoption of amendments to its Comprehensive Plan and development regulations? [Lee 4.31]~~

## **XI. Consistency and Coordination**

**Issue 27:** Fail to be guided by and comply with RCW 36.70A.070 (Preamble and Mandatory Elements), which requires consistent plans when, for example, not all elements of the CP are consistent with the Future Land Use map, and when the City reduced available gross acreage for development to account for critical areas, but failed to increase net density when it adopted new Planned Residential Development



(PRD) regulations with bonus density adjacent to critical areas and adopted the new requirements for cul-de-sacs, roads and driveways that also result in added density? [Wold Issue 3 and 6]

**Issue 28:** Violate RCW 36.70A.070 when its plans were not consistent, for example, between Policy LU-2.1 and Policy LU-2.2 thru LU-2.8, and Goal LU-10 and Policies LU-10.1 and LU-10.2 are inconsistent with Element E and Element F of the adopted Kitsap CWPP's? [Lee 4.22 and 4.24]

**Issue 29:** Violate RCW 36.70A.070(3) by failing to have a Capital Facilities Plan that is coordinated with the Financial Plan and violate 36.70A.070(3) and .070(8) when, for example, the Parks & Recreation element is not consistent and not coordinated with the Capital Facilities Plan? [Wold Issue 8 and Lee 4.18 (in part)]

**Issue 30:** Violate RCW 36.70A.172 and 36.70A.070 when, for example, its CAO is inconsistent with the Natural Environment Element of the CP (Chapter 5) and its Land Capacity Analysis methodologies (net vs. gross density calculations) are inconsistent/uncoordinated with Kitsap County CWPP's, Buildable Lands Analysis, Sub-Area Plan, and County methodologies (Comp Plan, Appendix A-1/A-2, Appendix C-1, C-2, C-3; SEIS; Comp Plan Chapter 2 Land Use; Comp Plan chapter 14 Land Development Review & Evaluation)? [Wold Issues 15 and 1G and Lee 4.23, 4.29, 4.3 and 4.4]

**Issue 31:** Fail to be guided by RCW 36.70A.010, uncoordinated growth, for example, as it relates to the Draft Comprehensive Plan, Table 14.1 and the SEIS? [Lee 4.27]

## **XII. Property Rights and Due Process**

**Issue 32:** Violate RCW 36.70A.020(6) and 36.70A.370 by designating certain areas within the UGA and the City as "open space" because these areas are available for the City's use through eminent domain after an indeterminate span of time, thus violating property rights? [Lee 4.1]

~~**Issue 33:** Violate RCW 36.70A.150, .160, and .165 by avoiding substantive due process requirements causing (1) retroactive legislation and/or (2) takings by applying an arbitrary designation of open space to critical area buffers? [Lee 4.2]~~

## **XIII. Capital Facilities – including water, sewer, stormwater, roads, and funding**

**Issue 34:** Violate RCW 36.70A.020(12), 36.70A.070(3), 36.70A.070(4) 36.70A.070(6)(a)(iii)(D), 36.70A.070(6)(a)(iv)(C), and 36.70A.120 by:

(a) Not demonstrating that it has sufficient water supply, capacity, and water rights to meet the forecasted population projections for the UGA and failing to reassess the land use element because of this water supply shortfall as noted in Chapter 13 Capital Facilities Plan, Appendix B-1 Water System Plan, and Policy CF-3.1? [Lee 4.10, 4.14, 4.23 (in part)]

1 (b) Not accounting for the conversion of existing homes within the City and the  
2 UGA, currently using private wells and septic systems, to City sewer and water  
3 as mandated by City policy? [Lee 4.11, 4.23 (in part)]  
4

5 (c) Not having specific plans to bring deficient roads and intersections up to the  
6 City's Level of Service (LOS) minimums and a discussion of how additional funds  
7 will be raised or land use plans modified to address LOS deficiencies? [Lee Issue  
8 4.17]  
9

10 (d) Failing to ensure adequacy of public facilities and services without decreasing  
11 current levels and services and by not performing its activities and making capital  
12 budget decisions that conform to its CP when, for example, the City has not had  
13 adequate funding available to maintain existing roads and has told citizens that it  
14 has no money available to maintain roads in newly-annexed UGA's where roads  
15 were maintained for decades by Kitsap County? [Wold 1J and 9]  
16

17 **Issue 35:** Violate RCW 36.70A.070(3), 36.70A.070(6), 36.70A.070(8) by failing to  
18 accurately and adequately identify funding sources in the 2009 6-Year Capital  
19 Improvement Plan, failing to meet goal CF-4 and Policies CF-4.1 thru CF-4.3 and by  
20 arbitrarily choosing the identified funding sources in the 2010 Capital Facilities Plan?  
21 [Wold Issue 8 (in part); Lee 4.12, 4.13, 4.16 and 4.18 (in part)]  
22

23 **Issue 36:** Violate RCW 36.70A.020(1,2,12) and 36.70A.070(3) in light of the  
24 "adequacy" requirements of Policies CF-3.1 thru CF-3.5? [Lee 4.15]  
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#### 26 **XIV. Comprehensive Plan Update**

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28 **Issue 37:** Violate RCW 36.70A.130(4)(a) because it did not complete its  
29 Comprehensive Plan update on time? [Lee 4.32]  
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#### 31 **XV. Economic Development**

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33 **Issue 38:** Fail to be guided by and comply with RCW 36.70A.020(5) when, for example,  
34 it adopted a plan and regulations that provided excessively large areas for industrial and  
35 commercial development, as well as low-density, residential housing sprawl, all of which  
36 leads to numerous empty businesses downtown and on Viking Avenue, as well as  
37 businesses and housing in areas of Bremerton, Washington? [Wold 1E]  
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